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| 10/566,816 | 04/24/2006 | Jean-Claude Hubert | ARNIPAU03US | 9025 |
| 79782 7590 04/02/2009 Law Offices of Daniel L. Dawes 5200 Warner Blvd, Ste. 106 Huntington Beach, CA 92649 | | | | |
| EXAMINER | | | | |
| RUSH, KAREEN KAY | | | | |
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| 04/02/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,816

Applicant(s)

HUBERT, JEAN-CLAUDE

Examiner

KAREEN RUSH

Art Unit

4128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) 3 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 2 and 4-7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 1/26/2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date 8/30/2006, 1/26/2006
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows: Species 1 (as depicted in Fig. 1, 2 and 3); Species 2 (as depicted in Fig. 4); Species 3 (as depicted in Fig 5).

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: none of the claims are held to be generic.

2. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the special technical feature of each species is their specific technical structure (as depicted in the drawings)

and the specific technical structure of each species is mutually exclusive to that species (i.e. the technical structure of Species 1 is not found in Species 2 and the technical structure of Species 2 is not found in Species 1).

3. A telephone call was made to Daniel L. Dawes on December 22, 2008 to request an oral election to the above restriction requirement, but did not result in an election being made.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Applicant's election with traverse of Species 1 which also includes Fig. 2 and Fig. 3 in the reply filed on 2/27/2009 is acknowledged. The traversal is on the ground(s) that it would not impose an undue burden to examine all inventions; such argument is not found persuasive because the entire application (a) contains a number of species that are patentably distinct from one another and (b) includes divergent subject matter that separates the species. The divergent subject matter separating the species is a burden for examination. In addition, amended claim 3 recites "a ring" (line 1). This limitation is shown in species 2 of Fig. 4, which is a non-elected embodiment. Accordingly claim 3 has been withdrawn from consideration as being drawn to the non-elected invention. Claims 1, 2 and 4-7 are being treated on the merit.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

6. The drawings are objected to because reference numeral 2 in Figure 3 is lacking a reference line.
7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the protruding rim (claim 5, line 2) and the rounded off corner portion (claim 7, line 3) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

8. The disclosure is objected to because of the following informalities: The specifications states "4, 16" (page 5, line 29) it is believed from the context of the surrounding words that the previous phrase should read "4 and 16". Appropriate correction is suggested.

FIG. 6

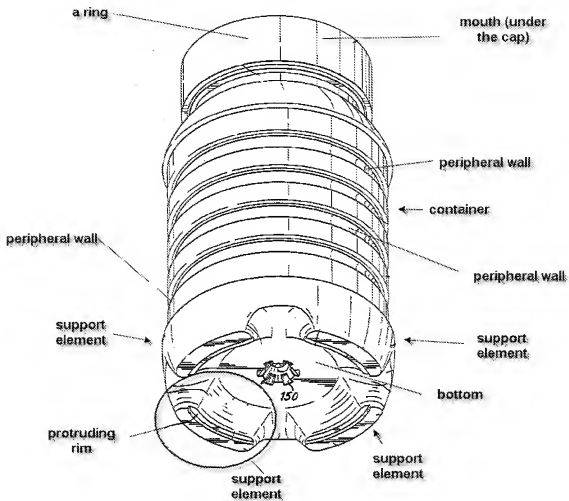
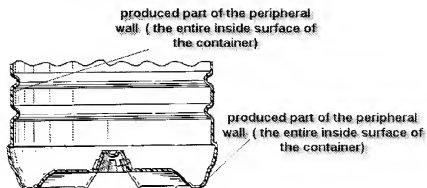


FIG. 9



Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1 and 3 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 states "at least one support element" in line 6 and claim 3 states "the support element" in line 3. The specification describes a container capable of working with 3 support elements. How is the container capable of working with one support element?

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
13. Claim 6 recites the limitation the "produced part" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobias (6612451) in view of Fuller (US5000314).

a. Regarding claim 1, Tobias teaches a container (in annotated Fig. 6) for containing foodstuff. The container comprises a bottom (in annotated Fig. 6); a peripheral wall (in annotated Fig. 6), integral with the bottom and extends upward from the bottom and defines a mouth opening (in annotated Fig. 6). There is at least one support element (in annotated Fig. 6) arranged on the bottom at a position corresponding to the edge of the mouth opening, such that in a stacked position of at least two identical containers, the support element of the first container rests on the edge of the mouth opening of the second container (it is inherent that the lid rests on the edge of the mouth opening and the second container rests on the lid and the edge of the mouth opening in Tobias Fig. 5 at 56) and at least three support elements (in the above annotated Fig. 6) in the form of a bulge are formed in the bottom and side wall and protrude beyond the bottom plane. The Tobias reference DIFFERS in that it does not teach a foil layer in between the mouth and the lid that is on the edge of the mouth of the container. Attention however is directed to Fuller which discloses another stackable container. The stackable container has a foil seal (Fuller, Fig. 1 at 20) over the container's mouth and the cap or lid resting on the containers opening over the foil seal. Therefore, it would have been obvious to one of ordinary skill

in the art at the time the invention was made to have modified Tobias by employing a foil seal over the containers opening, in view of the teachings of Fuller, in order to create a tamper proof seal.

- b. Regarding claim 2, Tobias teaches the bulges protrude beyond the peripheral wall (in the above annotated Fig. 6).
- c. Regarding claim 4, Tobias teaches the at least three support elements (in the above annotated Fig. 6) are evenly distributed over the bottom.
- d. Regarding claim 5, Tobias teaches the support element comprises a protruding rim or support ridge (in the above annotated Fig. 6).
- e. Regarding claim 6, Tobias teaches the support element is arranged inside the produced part of the peripheral wall (in the above annotated Fig 9).
- f. Regarding claim 7, Tobias teaches the bottom and the peripheral wall integral with the bottom are connected via a rounded off corner portion or bumper (Tobias, Fig. 9 at 122).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Hayes reference discloses stackable containers having bulges on the bottom of the containers. The Nordland reference discloses a container having a bulge on the bottom of the container. The Conti reference discloses stackable containers having bulges on the bottom of the containers. The Fox reference discloses stackable containers having bulges on the bottom of the containers and peel away membranes at the opening of the containers. The McManus reference discloses a

container having bulges on the peripheral wall of the container and the side of the container. The Nemeth reference discloses stackable containers having bulges on the side of the containers. The Cox reference discloses stackable containers having bulges on the bottom of the containers. The Diamond reference discloses stackable containers having bulges on the bottom of the containers. The Walker reference discloses stackable containers having bulges on the bottom of the containers. The Massey reference discloses a container having a peel away closure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREEN RUSH whose telephone number is (571)270-5611. The examiner can normally be reached on Monday-Friday (8:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit: 4128

K.R.

AU 4128

/Khoa D. Huynh/

Supervisory Patent Examiner, Art Unit 4128